

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE ADOBE INC. AND ADOBE SYSTEMS
SOFTWARE IRELAND LIMITED'S *EX
PARTE* APPLICATION FOR AN ORDER
PURSUANT TO 28 U.S.C. § 1782 TO
OBTAIN DISCOVERY FOR USE IN A
FOREIGN PROCEEDING

C.A. No.:

**[PROPOSED] ORDER GRANTING *EX PARTE* APPLICATION
FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782 TO OBTAIN
DISCOVERY FOR USE IN A FOREIGN PROCEEDING**

THIS CAUSE came before this Court upon the Application of Adobe Inc. and Adobe Systems Software Ireland Limited for Judicial Assistance Pursuant to 28 U.S.C. § 1782 (“Application”) in aid of anticipated proceedings before the Dutch Court.

This Court, having considered the Application, the supporting materials, and otherwise being fully advised, finds as follows:

1. Applicant met the requirements under 28 U.S.C. § 1782 for granting the requested judicial assistance and relief.
2. Respondent Marsh Funding LLC resides or is found in Delaware.
3. The discovery sought through the Application is for use in foreign proceedings.
4. Applicant, who will be a party-litigant in the anticipated foreign proceedings, is an interested person within the meaning of Section 1782.
5. The discretionary factors described in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004) sufficiently weigh in favor of granting the Application. More particularly, and without prejudice to any potential objections by Respondent: (1) Respondent is not a participant in the anticipated Dutch Proceeding, and the requested discovery appears not to be

obtainable through an order from the foreign court; (2) there is no indication the foreign court would reject U.S. federal-court judicial assistance as requested in the Application; (3) the Application does not appear to conceal an attempt to circumvent foreign proof-gathering restrictions; and (4) the Application appears to seek discovery that is not unduly intrusive, or burdensome.

Accordingly it is hereby **ORDERED** and **ADJUDGED** as follows:

1. The Application is **GRANTED**.
2. Unless otherwise specified herein, any discovery taken pursuant to this Order shall be governed by the Federal Rules of Civil Procedure and the Local Rules of this Court.
3. Applicant's request for leave to take discovery from Marsh Funding LLC including leave to serve a subpoena substantially similar in form to Exhibit 1 to the Declaration of Noelle Williams (the "Subpoena") is **GRANTED**. The Subpoena shall include as an attachment a copy of the Application and a copy of this Order.
4. Promptly upon receiving service of the Subpoena, Respondent shall meet and confer in good faith with counsel for Applicants to seek to identify and address any objections Respondent may have to the Subpoena, and to identify suitable search parameters and search terms for compliance.
5. Responses and objections to the Subpoena, and any motion to quash, shall be served within 14 days of service of the Subpoena. In the event that Respondent moves to quash, Marsh's opposition papers shall be due within 7 days of service of the motion.
6. Respondent shall substantially complete their production of responsive documents, including any privilege log, within 21 days of service of the Subpoena or, if a motion to quash is made, within 48 hours of a ruling on any motion to quash; provided that, as to any subset of

responsive documents not subject to any objections or a motion to quash, those documents shall be produced within 21 days of service of the Subpoena.

7. Respondent shall appear for a deposition on a mutually agreeable date within thirty (30) days of service of the Subpoena for deposition testimony, or by such other date as agreed between Applicant and Respondent. The deposition of Marsh Funding LLC shall proceed in accordance with Fed. R. Civ. P. 30(b)(6).

8. The Court retains jurisdiction over this matter.

9. Nothing in this Order shall be construed as preventing or in any way limiting Applicants or any of the Respondents from seeking modification of this Order or leave of Court to serve any additional subpoena on any person or entity in connection with the Dutch Proceeding.

IT IS SO ORDERED.

Dated: _____

UNITED STATES DISTRICT JUDGE